

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 26, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2015AP724
STATE OF WISCONSIN**

Cir. Ct. No. 2008CF418

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ANTHONY T. MILLER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for St. Croix County:
EDWARD F. VLACK III, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Anthony Miller, pro se, appeals an order denying his WIS. STAT. § 974.06 (2013-14)¹ postconviction motion to withdraw his guilty

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

pleas to two counts of possessing child pornography. Because we conclude the motion is procedurally barred, we affirm the order.

¶2 Following his 2009 convictions, Miller filed a postconviction motion and subsequent appeal under WIS. STAT. RULE 809.30 alleging a defective plea colloquy and ineffective assistance of trial counsel. The circuit court denied the postconviction motion and this court affirmed the judgment and order in *State v. Miller*, No. 2011AP1726-CR, unpublished slip op. (WI App Aug. 14, 2012).

¶3 In 2012, Miller filed a postconviction motion under WIS. STAT. § 974.06 alleging nine grounds for relief. Significantly, the first two grounds asserted a lack of evidence to support the convictions and the circuit court's failure to establish a factual basis for the guilty pleas. The circuit court denied the motion and Miller's motion for reconsideration, and this court affirmed the order denying reconsideration in *State v. Miller*, No. 2013AP2032, unpublished slip op. (WI App June 10, 2014).

¶4 Miller then filed the present motion under WIS. STAT. § 974.06, alleging ineffective assistance of postconviction counsel for failing to directly raise the issue of whether there was any evidence to support Miller's conviction and for failing to assert ineffective assistance of trial counsel for failing to assert that issue.

¶5 In order to establish ineffective assistance of trial and postconviction counsel, Miller would have to establish that there was an inadequate factual basis for his guilty pleas. That underlying issue was adversely decided in Miller's first WIS. STAT. § 974.06 motion. He cannot relitigate that claim by merely repackaging it under the rubric of ineffective assistance of counsel. An issue once

litigated cannot be reasserted regardless of how artfully it is rephrased. *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

